

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Tiffany M. Montgomery,	:	
	:	C.A. No. 06-05-0075AP
Defendant below/	:	
Appellant,	:	
	:	
v.	:	
	:	
Frank M. Weemes,	:	
t/a A&A Services,	:	
	:	
Plaintiff below/	:	
Appellee.	:	

Submitted: September 7, 2006

Decided: September 12, 2006

Decision on appeal from the Justice of the Peace Court.

Judgment of the Justice of the Peace Court is reversed.

John C. Andrade, Esquire, 116 West Water Street, P.O. Box 598, Dover, Delaware 19903, Attorney for Appellant.

Sandra Dean, Esquire, 12322 Willow Grove Road, Camden, Delaware 19934, Attorney for Appellee.

Trader, J.

In this *de novo* review of the magistrate's order denying appellant's motion for relief from a default judgment, I hold that the magistrate's decision in denying the appellant's motion to vacate the default judgment was incorrect. Accordingly, the judgment of the lower court is reversed.

Procedural Posture

On February 13, 2006, the appellee/plaintiff below filed a civil action in the amount of \$2,000.00 in Justice of the Peace Court 16 against the appellant/defendant below. On the same date, notice was sent to the defendant by certified mail, and on March 13, 2006, service of the certified mail was returned as unclaimed. On April 7, 2006, judgment by default was entered against the defendant in the amount of \$2,000.00, and on April 13, 2006, the defendant filed a motion to vacate the default judgment. On May 4, 2006, the magistrate denied the defendant's motion to set aside the default judgment, and on May 16, 2006 the defendant filed an appeal to this Court.

The Standard of Review

The denial of an application to vacate a default judgment possesses all the attributes of finality and thus is subject to appeal. *Ney v. Polite*, 399 A.2d 527, 529 (Del. 1979). The appeal permits only review of the magistrate's Order denying relief. *Id.* The appellant is entitled to a *de novo* resolution of appellant's motion for relief from the earlier Justice of the Peace Court decision. *Kenyon v. Setting*, 1992 WL 52200 at *2 (Del. Super. Feb. 20, 1992). The court is required to hold an evidentiary hearing on all factors pertaining to the motion. *Id.*

Relevant Facts Developed at Evidentiary Hearing

The defendant entered into a contract with the plaintiff whereby the plaintiff was to clear land and remove the debris of the mobile home for the sum of \$4,000.00. The

defendant paid the plaintiff \$2,000.00, and when she did not pay the balance of money, the plaintiff filed a civil action in the Justice of the Peace Court and obtained a default judgment against her. The defendant testified at the evidentiary hearing that the plaintiff did not completely remove the debris and that he buried it in the basement. She asserts that she has a counterclaim against him in the amount of \$6,000.00.

She also testified that she did not receive notice of the hearing. A certified notice was sent by a clerk of the Justice of the Peace Court to 429 Phoenix Drive, Dover, Delaware, and the notice was returned unclaimed. The defendant and her boyfriend were living with his mother and father at the above address. The locked mailbox was shared by all four of them and there were three keys to the mailbox. The defendant and her boyfriend shared a key, and his mother and father each had a key. She testified that she worked during the day and the mail was taken in by her boyfriend's father.

Marlene Nicholson, the boyfriend's mother, testified that her husband primarily checked the mail and he kept the mail and other personal belongings in his car. When the defendant received notice of the default judgment, she went back to court within a few days and filed a motion to vacate the default judgment.

The Equitable Nature of the Proceedings

A motion for relief of judgment in the Justice of the Peace Court is filed under the Justice of the Peace Civil Rule 60(b). A petition to set aside a default judgment is addressed to the sound discretion of the court. *Model Finance Co. v. Barton*, 188 A.2d 233, 234 (Del. Super. 1963).

“The proceeding is essentially equitable in nature, ruled by equitable principles, and the appeal is to the conscience of the court.” *Kaiser-Frazer Corp. v. Eaton*, 101 A.2d 345, 353 (Del. Super. 1953). Default judgments are viewed with disfavor, and a trial on

the merits is considered superior to a default judgment. *Keystone Fuel Oil Co. v. Del-Way Petro.*, 364 A.2d 826, 828 (Del. Super. 1976).

The Threshold Requirement of Excusable Neglect

The threshold requirement in deciding whether to vacate a default judgment under Rule 60(b) is for the moving party to establish that his conduct or neglect is that of a reasonably prudent person under the circumstances. *McMartin v. Quinn*, 2004 Del. Super. LEXIS 28 at *5 (Del. Super. Feb. 3, 2004). If the defaulting party can establish excusable neglect, the Court must then consider whether the defaulting party has a meritorious defense and whether the non-defaulting party would be substantially prejudiced by vacating the default judgment. *Id.* at *10.

Excusable neglect is neglect which might have been the act of a reasonably prudent person under the circumstances. *Cohen v. Brandywine Raceway Ass'n*, 238 A.2d 320, 325 (Del. Super. 1968). “Carelessness and negligence are not necessarily ‘excusable neglect’. A mere showing of negligence or carelessness without a valid reason may be deemed insufficient. All the surrounding circumstances may be considered in determining the issue.” *Id.* (citations omitted).

The Conclusion of the Court

In the case before me, the defendant did not have actual notice of the civil action, and when she learned of the default judgment she promptly filed a motion in the lower court to reopen the default judgment. Additionally, her defense to the claim is not frivolous. Based on the defendant’s evidence, I conclude her conduct was that of a reasonably prudent person under the circumstances. Additionally, she has presented evidence of a meritorious defense to the plaintiff’s claim and the plaintiff will not be prejudiced by vacating the default judgment.

The Plaintiff's Cases Are Distinguishable

The plaintiff cites *Meyer & Meyer v. Van Durme*, 2000 Del. C.P. LEXIS 53 (Del. C.C.P. Oct. 3, 2000) for the proposition that a default judgment will not be set aside for failure to claim certified mail absent good cause shown. Although this is a correct statement of the law, *Meyer & Meyer* is distinguishable from the case at bar because in *Meyer & Meyer* the defendants did not assert that they did not receive the certified mail notices. The plaintiff also cites *Word v. Balakrishnan*, 2004 Del. Super. LEXIS 101 at *8 (Del. Super. Apr. 13, 2004), which held that “[p]roperly addressed mail is presumed to be received by the addressee . . . [and] mere denial of receipt is generally not enough to rebut.” (citations omitted). In the case before me, there was credible evidence that the defendant never received notice. I, therefore, hold that the defendant has maintained the burden of proof of overcoming that presumption.

Since I conclude that the judgment in the lower court should be vacated on the grounds of excusable neglect, I need not address the constitutional issues suggested by the defendant. I note, however, that minimum due process requires reasonable notice and opportunity to be heard. Under the circumstances of this case, the defendant neither had reasonable notice nor an opportunity to be heard.

Based on the foregoing decision, the decision of the lower court is reversed. The judgment is vacated and the case is remanded to the Justice of the Peace Court 16 for trial.

IT IS SO ORDERED.

Merrill C. Trader
Judge